

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

S. RUPPIN, INC.

Claim No. CU -5020

Decision No. CU - 4132

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimant:

Leonard Bickwit, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$89,906.56, was presented by S. RUPPIN, INC., based upon the asserted loss of a stock interest in a Cuban corporation, the loss of inventory and a debt due from that corporation.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967 (FCSC Reg., 45 C.F.R. Sec. 513.1(d) (Supp. 1967)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g))

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) This is such a claim.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of New York and that at all pertinent times all of claimant's outstanding capital stock was owned by native-born American citizens. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Stock Interest

The evidence establishes and the Commission finds that claimant owned forty (40) shares of 6% cumulative preferred stock and 36 shares of common stock in Compania De Tabaco De La Habana S. Ruppín, S.A., which was intervened by the Government of Cuba on September 15, 1960 by Resolution 20260.

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Thereafter the company was listed as nationalized in Resolution No. 3, pursuant to Law 851. Since the Cuban firm was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that a stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The subject company was engaged in the commission business in the purchase and sale of tobacco, stripping of tobacco and other related matters.

The company's authorized stock consists of 60 shares of 6% preferred stock having a par value of \$1,000.00 and 60 shares of common stock having a par value of \$1,000.00. There were outstanding on the date of loss 60 shares of 6% preferred stock and 60 shares of common stock.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes a copy of an audited balance sheet for Compania De Tabaco De La Habana S. Ruppin, S.A., and a Statement of Net Loss and Deficit as of December 31, 1959, which reflects the following:

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Assets

Current assets:

Cash		\$ 5,693.71
Trade accounts receivable:		
La Primadora Cigar Corporation, New York	\$ 27,688.17	
Other	<u>398.25</u>	
		28,086.42
Operating supplies, at cost		<u>1,341.64</u>
Total current assets		<u>35,121.77</u>

Capital assets, at cost:

Land and building at Artemisa	15,576.01	
Equipment	17,869.68	
Furniture and fixtures	<u>5,681.16</u>	
	39,126.85	
Less - Reserve for depreciation	<u>21,381.41</u>	
		17,745.44

Other assets:

Accounts receivable from:		
Estate of Jose E. Smith, deceased	25,507.12	
Guillermo Escalera, employee	<u>4,876.78</u>	
	30,383.90	
Investment in La Tabacalera, Compania de Seguros, S.A., at cost	6,176.00	
Deferred charges	<u>533.72</u>	
		<u>37,093.62</u>
		<u>\$89,960.83</u>

Liabilities

Current liabilities:

Account payable to S. Ruppin, Inc., New York	\$10,356.15
Other accounts payable and accrued expenses	<u>1,080.29</u>
Total current liabilities	<u>11,436.44</u>

Capital and deficit:

Capital stock:	
6% cumulative preferred with voting rights, authorized, issued and outstanding - 60 shares of \$1,000 par value each	60,000.00
Common, without voting rights, authorized, issued and outstanding - 60 shares of \$1,000 par value each	<u>60,000.00</u>
	120,000.00
Deficit	<u>(41,475.61)</u>

78,524.39
\$89,960.83

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Moreover, a Statement of Net Loss and Deficit for the year ended December 31, 1959, reflects the following:

Revenue:		
Stripping		\$53,298.75
Commissions		17,378.33
Brokerage, storage and other		<u>7,286.25</u>
		77,963.33
Costs and expenses:		
Wages and salaries:		
Stripping	\$ 34,945.87	
Foremen and warehouse	10,430.00	
Management and office	17,485.60	
Stripping expenses, other	2,483.40	
Cartage	2,083.18	
Packing and baling	219.11	
Rent	6,000.00	
General expenses	5,454.23	
Insurance	2,233.28	
Taxes:		
Tobacco retirement fund	3,210.02	
On declared capital	250.00	
Other	1,031.89	
Depreciation	<u>1,094.28</u>	
		86,920.86
Net loss for the year		(8,957.53)
Deficit at the beginning of the year		(32,518.08)
Deficit at the end of the year		<u>(\$41,475.61)</u>

With respect to the asset investment in La Tabacalera Compania de Seguros, S.A., claimant submitted a copy of a document entitled "Comments on Financial Statements as of June 30, 1953" wherein it appears that the Cuban enterprise's investment in La Tabacalera Compania de Seguros, S.A., was 143 shares. In addition, Morton Morris, the president of the claimant corporation, states in an affidavit that the Cuban enterprise owned 143 shares of La Tabacalera Cia. de Seguros, S.A., on the date of loss. Although this stock is listed in the instant balance sheet at cost \$6,176.00, evidence available to the Commission indicates that stock of La Tabacalera Cia. de Seguros, S.A., was valued at \$75.00 a share at about the time of loss. Accordingly, the Commission finds that the value of the 143 shares of Cia. de Seguros, S.A., in question was \$10,725.00 and this asset is adjusted accordingly.

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Under Current Liabilities - account payable to S. Ruppín, Inc., New York, the liability is listed in the balance sheet at \$10,356.15. However, schedule 7 submitted by the claimant company reflects that the interventor found this item to be \$24,246.40. Accordingly, this item is adjusted to \$24,246.40.

On the basis of all the evidence of record, the Commission finds that the value of the assets of Compania De Tabaco De La Habana S. Ruppín, S.A., at the time of intervention was \$94,509.83, and the corporation's liabilities were \$25,326.69, resulting in a net worth of \$69,183.14. The record indicates that Compania De Tabaco De La Habana S. Ruppín, Inc., had outstanding 60 shares of 6% cumulative preferred stock and 60 shares of common stock, each class having a par value of \$1,000.00 per share. The claimant asserts and the Commission finds that dividends were not paid to the preferred stockholders from July 1, 1954 to June 30, 1960. At \$60.00 per share per year the dividend per share for 6 years amounts to \$360.00 and for 60 shares amounts to \$21,600.00. Thus \$47,583.14 would have been available for general distribution among the holders of both classes of stock of Compania De Tabaco De La Habana S. Ruppín, S.A., if the company had been liquidated voluntarily with the preferred holders receiving in addition the \$21,600.00 due in dividends. The claimant in arriving at its net loss has submitted an amended Schedule 6 reflecting that the preferred stock should be fully compensated before any amount is paid on account of the common stock. The certificate of incorporation, however, does not so provide. Therefore, in accordance with the usual practice where the preference is only as to dividends, the holders of preferred stock share with the holders of the common stock in the distribution of any surplus remaining after payment of the preferred dividends. The Commission thus concludes that the dollar loss sustained in connection with ownership of each share of stock, preferred or common in Compania De Tabaco De La Habana S. Ruppín, S.A., is \$396.5295.

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In the instant claim, the Commission concludes that claimant, as holder of 40 shares of 6% Cumulative Preferred Stock of Compania De Tabaco De La Habana S. Ruppín, S.A., suffered a loss in the amount of \$14,400.00 for accrued dividends and as holder of 40 shares of Preferred and 36 shares of common stock suffered a loss in the amount of \$30,136.24 within the meaning of Title V of the Act, as a result of the intervention of Compania De Tabaco De La Habana S. Ruppín, S.A., by the Government of Cuba on September 15, 1960.

Inventory

Claimant asserts a claim for the loss of inventory in Cuba. In support of this item claimant submitted the affidavit of Morton Morris indicating the actual amounts paid by the claimant in 1960 for the purchase of 439 bales of tobacco.

The Commission finds that claimant owned 439 bales of tobacco which were located on the premises of the Cuban enterprise and which were lost by the intervention on September 15, 1960.

In arriving at the value of the inventory consideration was given to the affidavit of Morton Morris and to a photocopy of a memorandum dated September 20, 1960 showing the inventory. The Commission finds that the value of the claimant's interest in the inventory at the time of loss was \$9,671.12 and that the claimant, S. RUPPIN, INC., suffered a loss in that amount within the meaning of Title V of the Act as a result of the taking of this property by the Government of Cuba on September 15, 1960.

Debt

Claim is also asserted for a debt owed by the nationalized Cuban enterprise Compania De Tabaco De La Habana S. Ruppín, S.A. In support of this item claimant submitted the aforementioned Schedule 7 which is an itemization and a statement of accounts. The Commission finds that the balance due and owing the claimant on September 15, 1960, the date of loss, was \$24,246.40. Claimant states that it has not received payments on account of this debt.

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The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of nationalization within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Accordingly, the Commission finds that the loss sustained by claimant on September 15, 1960 on account of a debt due from Compania De Tabaco De La Habana S. Ruppín, S.A., was \$24,246.40.

Recapitulation

Claimant's losses within the meaning of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Stock interest in Compania De Tabaco De La Habana S. Ruppín, S.A.	\$44,536.24
Inventory	9,671.12
Debt	<u>24,246.40</u>
Total	\$78,453.76

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

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CERTIFICATION OF LOSS

The Commission certifies that S. RUPPIN, INC., suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-eight Thousand Four Hundred Fifty-three Dollars and Seventy-six Cents (\$78,453.76) with interest at 6% per annum from September 15, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

21 OCT 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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